IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

Crl.MC.No. 481 of 2007()

CC.8/2005 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER:

A.YOUNUSKUNJU,
PROPRIETOR,
M/S.YOUNUS CASHEW INDUSTRIES,
SHAJAHAN MANZIL,
VADAKKEVILA, KOLLAM

BY ADV. SRI.M.S.UNNIKRISHNAN
SMT.S.KARTHIKA
SRI.M.R.ANISON
SMT.K.P.GEETHA MANI
SRI.T.R.RAJESH

RESPONDENTS:

THE CENTRAL BUREAU OF INVESTIGATION,
REP.BY SUPERINTENDENT OF POLICE,
C.B.I/SPE COCHIN

BY SRI.S.SREEKUMAR, SC FOR CBI

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.481 of 2007

Dated this the 23rd day of February 2007

O R D E R

The petitioner is the second accused in a prosecution under Sections 420 and 417 I.P.C. The crime was registered in 2004. Investigation was conducted by the C.B.I. Final report was filed. Cognizance was taken. The petitioner appeared before the learned Chief Judicial Magistrate. Charges were framed under Section 240 Cr.P.C. Trial has already commenced. Examination of the witnesses has already commenced, it is submitted at the Bar by the learned counsel for the petitioner and the learned Standing Counsel for the CBI.

2. The petitioner, at this stage, has come to this court with the prayer that the powers under Section 482 Cr.P.C may be invoked to quash the proceedings initiated against the petitioner. It is contended that the liability, if any, is only civil and that, at any rate, the petitioner does not deserve to stand the trauma of continuation of this prosecution.

3. I must alertly remind myself of the nature, quality and contours of the jurisdiction which is sought to be invoked. The powers under Section 482 Cr.P.C are sweeping in its width and amplitude. But the width and amplitude of the powers must

bring with it the necessity to be careful and circumspect. In every case where discharge or acquittal is a possibility, this court will not be persuaded to invoke the powers under Section 482 Cr.P.C. Has justice failed? Is there miscarriage of justice? This is the mantra which this court must follow while considering the prayer for invocation of the extraordinary inherent jurisdiction available to this court.

4. While considering whether such powers are to be invoked, the conduct of the petitioner has also got to be taken into consideration. When the F.I.R was registered, when the final report was filed, when the charges were framed or till the trial commenced, the petitioner did not think it necessary to come to this court with this prayer under Section 482 Cr.P.C. I am certainly convinced that this is not a fit case where the powers under Section 482 Cr.P.C can or ought to be invoked.

5. In the result, this Criminal Miscellaneous Case is dismissed. I may hasten to observe that the dismissal of this Criminal Miscellaneous Case will not in any way fetter the rights of the petitioner to raise all necessary, appropriate and relevant contentions before the learned Chief Judicial Magistrate in the course of the trial.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006